



12/2004

1644

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Express Mail No.: EV 452 774 024 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Srivastava *et al.*

Confirmation No.: 3088

Serial No.: 09/393,652

Group Art Unit: 1644

Filed: September 10, 1999

Examiner: Ewoldt, Gerald R.

For: METHODS AND COMPOSITIONS
FOR THE TREATMENT AND
PREVENTION OF GRAFT
REJECTION USING HEAT SHOCK
PROTEINS

Attorney Docket: 8449-025-999

**PETITION UNDER 37 C.F.R. § 1.10(c) TO CORRECT
FILING DATE TO ACCORD WITH U.S. POSTAL SERVICE DEPOSIT DATE**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants hereby petition to correct the filing date of their Response mailed August 25, 2004 pursuant to 37 C.F.R. § 1.10(c).

The Response filed on August 25, 2004 by Applicants, to the Office Action dated February 25, 2004 consisted of the following:

- (1) Return postcard, which on one side had an itemized list of the papers mailed on August 25, 2004, and Express Mail Label No. EV 532 871 413 US;
- (2) Amendment Fee Transmittal Sheet (in duplicate);
- (3) Amendment and Reply Under 37 C.F.R. § 1.111, with Exhibits 1-3 and Corrected Drawings (21 replacement sheets for Figs. 1A-7B);
- (4) Fifth Supplemental List of References Cited with a copy of references CP-CU;
- (5) Supplemental Information Disclosure Statement with References CP-CU;
- (6) Petition for Extension of Time (in duplicate);

- (7) Declaration Under 37 C.F.R. § 1.132 by Pramod K. Srivastava with Exhibits A-I; and
- (8) Revocation and Power of Attorney.

In support of their Petition, and in satisfaction of the requirements for a grantable petition under 37 C.F.R. § 1.10(c), Applicants submit herewith:

- (a) a copy of each of the following items of the Response, bearing the number of the “Express Mail” mailing label, **EV 532 871 413 US**, that was placed on each item of correspondence prior to the original mailing:
 - (1) Return Receipt Postcard (**Exhibit 1**);
 - (2) Petition for Extension of Time (**Exhibit 2**);
 - (3) Amendment Fee Transmittal Sheet (**Exhibit 3**);
 - (4) the first page of Applicants’ Amendment (**Exhibit 4**);
 - (5) the first page of Applicants’ Supplemental Information Disclosure Statement (**Exhibit 5**); and
 - (6) the Fifth Supplemental List of References Cited (**Exhibit 6**); and
- (b) a true copy of the “Express Mail” mailing label number **EV 532 871 413 US** (**Exhibit 7**) showing the “date-in” which indicates that the package containing the Response was deposited in the U.S. Postal Service on August 25, 2004 at 9:47 PM and further bearing a date stamp indicating the date of August 25, 2004.

The above Exhibits establish that August 25, 2004 is the correct filing date under 37 C.F.R. § 1.10(a), since on that day, the Response was deposited in the “Express Mail Post Office to Addressee” service of the U.S. Postal Service. Attorneys for Applicants submit that this petition is being filed promptly after discovering that an incorrect filing date was accorded to Applicants’ Response mailed August 25, 2004. Accordingly, Applicants respectfully request that the filing date accorded to the subject Response be corrected from August 26, 2004 to August 25, 2004 under 37 C.F.R. § 1.10(c).

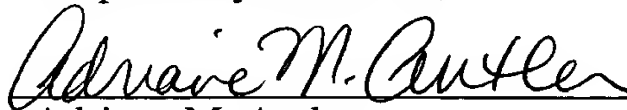
Applicants respectfully submit that the granting of this Petition is proper in that the petition satisfies all of the requirements of 37 C.F.R. § 1.10(c). In particular, (a) this Petition is being filed promptly after Attorneys for Applicants became aware that the Office had accorded a filing date other than the U.S. Postal Service deposit date; (b) this Petition establishes that the number of the “Express Mail” mailing label was placed on each of the above-identified papers enumerated in paragraph (a) above filed as part of Applicants’ Response prior to the original mailing by “Express Mail”; and (c) this petition includes a true copy of the “Express Mail” mailing label establishing that the “date in,” and the stamped date

both indicate that the date of deposit was August 25, 2004. Accordingly, Applicants respectfully request that the Examiner grant this Petition under 37 C.F.R. § 1.10(c).

Applicants respectfully request that the above remarks and enclosed Exhibits be made of record in the present application file. No fee is deemed necessary in connection with the filing of this Petition. However, should the Director determine that a fee is due, please charge the required amount to Jones Day Deposit Account No. 50-3013.

Date: December 17, 2004

Respectfully submitted,



Adriane M. Antler

32,605

(Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017-6702
Phone: (212) 326-3939


Enclosures



Express Mail No. _____ First Class Mail () _____
Date Mailed _____
Serial No. _____ Express Mail No.: **EV 532 871 413 US**
Inventor _____
For _____ Date Mailed: August 25, 2004
Serial No.: 09/393,652
Filed: September 10, 1999
Inventor(s): Srivastava et al.
For: Methods And Compositions For The Treatment And Prevention Of
Graft Rejection Using Heat Shock Proteins
() Affidavit
() Amendment
() Application
() _____ cla
() Assignment
() Brief (in
() Declaration
() Exec
() Declaration
() Exec
() Design A
() Disclaimer
() Disclosure
() w/rel
() Drawings
Other: _____
Attorney Docket No.: 8449-025-999 Sender: AMA/MJR
File No. _____ Sender: _____

• Amendment Fee Transmittal Sheet (in duplicate)
• Amendment and Reply Under 37 C.F.R. § 1.111 with Exhibits 1-3 and
Corrected Drawings (21 replacement sheets for Fig. 1A-7B)
• Fifth Supplemental List of References Cited with a copy of
References CP - CU
• Supplemental Information Disclosure Statement with Exhibits 1-3
• Petition For Extension of Time (in duplicate)
• Declaration Under 37 C.F.R. § 1.132 by Pramod K. Srivastava with
Exhibits A-I
• Revocation and Power of Attorney

REF CP → CU
with Revocation
and Paper Copy





Express Mail No.: **EV 532 871 413 US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: **SRIVASTAVA *et al.***

Confirmation No.: **3088**

Serial No.: **09/393,652**

Art Unit: **1644**

Filed: **September 10, 1999**

Examiner: **Gerald R. Ewoldt, Ph.D.**

For: **METHODS AND COMPOSITIONS FOR
THE TREATMENT AND PREVENTION
OF GRAFT REJECTION USING HEAT
SHOCK PROTEINS**

Attorney Docket No.: **8449-025-999**

PETITION FOR EXTENSION OF TIME UNDER 37 CFR § 1.136(A)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

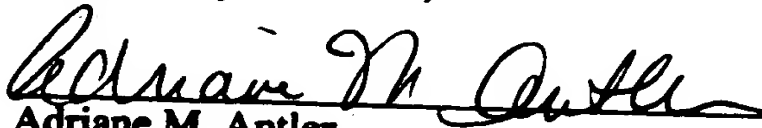
Sir:

It is respectfully requested that the time for response to the Office Action dated February 25, 2004 be extended for a period of three months from May 25, 2004 to and including August 25, 2004.

The fee for this extension is estimated to be **\$475** (Small Entity). Please charge the required fee to Jones Day Deposit Account No. 50-3013. A copy of this sheet is enclosed.

Respectfully submitted,

Date: **August 25, 2004**


Adriane M. Antler **32,605**
(Reg. No.)

Jones Day
222 East 41st Street
New York, New York 10017-6702
(212) 326-3939



Express Mail No.: **EV 532 871 413 US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: **SRIVASTAVA et al.**

Confirmation No.: **3088**

Serial No.: **09/393,652**

Art Unit: **1644**

Filed: **September 10, 1999**

Examiner: **Gerald R. Ewoldt, Ph.D.**

For: **METHODS AND
COMPOSITIONS FOR THE
TREATMENT AND
PREVENTION OF GRAFT
REJECTION**

Attorney Docket No: **8449-025-999**

FEE TRANSMITTAL SHEET

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The fee required to be filed with the accompanying amendment of even date herewith concerning the above-identified application has been estimated to be \$0.00.

The claim amendment fee has been estimated as shown below:

(Col. 1)		(Col. 2)		(Col. 3)		<input checked="" type="checkbox"/> SMALL ENTITY		<input type="checkbox"/> OTHER THAN A SMALL ENTITY	
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID		PRESENT EXTRA		RATE	ADDIT. FEE	OR	RATE
TOTAL	37	MINUS	59	0	x 9	\$	0.00		x 18
INDEP.	2	MINUS	4	0	x 43	\$	0.00		x 86
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM						\$	0.00		\$
TOTAL						\$	0.00	OR	TOTAL
						\$			\$

Please charge the required fee to Jones Day Deposit Account No. 50-3013. A copy of this sheet is enclosed.

Date: August 25, 2004

Respectfully submitted,

Adriane M. Antler 32,605
Adriane M. Antler (Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939

Enclosure



Express Mail No.: **EV 532 871 413 US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: **SRIVASTAVA *et al.***

Confirmation No.: **3088**

Serial No.: **09/393,652**

Art Unit: **1644**

Filed: **September 10, 1999**

Examiner: **Gerald R. Ewoldt, Ph.D.**

For: **METHODS AND COMPOSITIONS FOR
THE TREATMENT AND PREVENTION
OF GRAFT REJECTION USING HEAT
SHOCK PROTEINS**

Attorney Docket No.: **8449-025-999**

AMENDMENT AND REPLY UNDER 37 C.F.R. § 1.111

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed February 25, 2004, (the "Office Action") Applicants respectfully request that the following remarks be considered by the Examiner and the following amendments be entered into the record of the above-captioned application. Applicants submit herewith: an Amendment Fee Transmittal Sheet; a Fifth Supplemental List of References Cited and Supplemental Information Disclosure Statement; Exhibits 1-3, which provide amino acid sequence homology comparisons between heat shock proteins; corrected Drawings (21 replacement sheets for Fig. 1A - 7B); a Petition for Extension of Time; a Declaration under 37 C.F.R. § 1.132 by inventor Pramod K. Srivastava with Exhibits A - I, and a Revocation and Power of Attorney.

Amendments To The Claims begin on page 2 of this paper.

Remarks begin on page 6 of this paper.



Express Mail No.: **EV 532 871 413 US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: *Srivastava et al.*

Confirmation No.: 3088

Application No.: 09/393,652

Group Art Unit: 1644

Filed: September 10, 1999

Examiner: Gerald R. Ewoldt, Ph.D.

For: **METHODS AND COMPOSITIONS
FOR THE TREATMENT AND
PREVENTION OF GRAFT
REJECTION USING HEAT SHOCK
PROTEINS**

Attorney Docket No.: 8449-025-999

**SUPPLEMENTAL INFORMATION DISCLOSURE
STATEMENT UNDER 37 C.F.R. §1.56 AND §1.97**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the continuing duty of disclosure imposed by 37 C.F.R. § 1.56 and § 1.97 to inform the Patent Office of all references coming to the attention of each individual associated with the filing or prosecution of the subject application, which are or may be material to the patentability of any claim of the application, Attorneys for Applicants hereby invite the Examiner's attention to the references **CP** to **CU** listed on the attached revised form PTO 1449 entitled "List of References Cited by Applicant." Copies of references **CP** to **CU** are submitted herewith.

Identification of the listed references is not meant to be construed as an admission of Applicants or Attorneys for Applicants that such references are available as "prior art" against the subject application.

Applicants respectfully request that the Examiner review the foregoing references and that the references be made of record in the file history of the application.



ATTY DOCKET NO.

8449-025-999

APPLICATION NO

09/393,652

APPLICANT

Srivastava and Chandawarkar

FILING DATE

September 10, 1999

GROUP

1644

**SUPPLEMENTAL LIST OF REFERENCES CITED
BY APPLICANT**

(Use several sheets if necessary)

U.S. PATENT DOCUMENTS

*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	CP	6,312,711 B1	11/6/2001	Duchateau et al.			10/28/1999
	CQ	6,709,672 B2	3/23/2004	Henot et al.			6/25/2001
	CR	5,837,251	11/17/1998	Srivastava			9/13/1995

FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
							YES	NO

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)

CS	Chandawarkar et al. (2004) "Immune Modulation With High-Dose Heat Shock Protein Gp96: Therapy Of Murine Autoimmune Diabetes And Encephalomyelitis" <i>International Immunology</i> 16(4):615-624
CT	Janetzki et al. (2000) "Immunization Of Cancer Patients With Autologous Cancer-Derived Heat-Shock Protein Gp96 Preparations: A Pilot Study" <i>Int. J. Cancer</i> 88:232-238
CU	Belli et al. (2002) "Vaccination Of Metastatic Melanoma Patients With Autologous Tumor-Derived Heat-Shock Protein Gp96-Peptide Complexes: Clinical And Immunologic Findings" <i>J. Clin. Oncol.</i> 20:4169-4180

EXAMINER

DATE CONSIDERED

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.



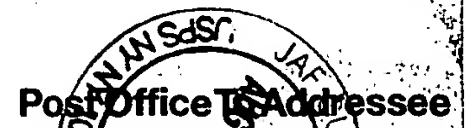
EV 532871413 US



UNITED STATES POSTAL SERVICE®

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Label 11-F June 2002



ORIGIN (POSTAL USE ONLY)

PO ZIP Code 10199	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In 8/23/04 Mo. Day Year	<input checked="" type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$33.45
Time In 09:47 <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight 6 lbs. 7 ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance-Client Initials 11	Total Postage & Fees \$33.45

DELIVERY (POSTAL USE ONLY)

Delivery Attempt Mo. Day	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Delivery Attempt Mo. Day	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Delivery Date Mo. Day	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		Customer Signature

CUSTOMER USE ONLY

METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

Federal Agency Acct. No. or
Postal Service Acct. No.

FROM: (PLEASE PRINT)

PHONE ()

JUNES DAY
222 E 41ST ST FL 2
NEW YORK
USA

NY 10017-6702

708584-999024

TO: (PLEASE PRINT)

PHONE ()

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRESS HARD.

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Express Mail No.: **EV 452 774 024 US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Srivastava *et al.*

Confirmation No.: 3088

Serial No.: 09/393,652

Group Art Unit: 1644

Filed: September 10, 1999

Examiner: Ewoldt, Gerald R.

For: METHODS AND COMPOSITIONS
FOR THE TREATMENT AND
PREVENTION OF GRAFT
REJECTION USING HEAT SHOCK
PROTEINS

Attorney Docket: 8449-025-999

PETITION UNDER 37 C.F.R. § 1.181(a)
TO WITHDRAW HOLDING OF ABANDONMENT

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This petition is made in response to the November 17, 2004 Notice of Abandonment issued in connection with the above-identified application. A copy of the Notice is attached hereto as **Exhibit A**. The Notice of Abandonment indicates that Applicants' Response filed in reply to the Office Action mailed on February 25, 2004 by the U.S. Patent and Trademark Office was untimely, therefore resulting in abandonment of the subject application.

Applicants hereby petition to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181(a), since a timely response to the Office Action was filed. Accordingly, Applicants also enclose herewith a Petition under 37 C.F.R. §1.10(c) to correct the filing date for correspondence by "Express Mail", including a true copy of the "Express Mail" mailing label showing the "date-in" and the stamped date which is relied upon to show that the filing date accorded to the present Response should be corrected from August 26, 2004 to August 25, 2004.

Applicants maintain that the enclosed Petition under 37 C.F.R. §1.10(c) establishes that August 25, 2004 is the correct filing date for their Response to the February

25, 2004 Office Action under 37 C.F.R. § 1.10(a), since on that day, the Response was deposited in the "Express Mail Post Office to Addressee" service of the U.S. Postal Service. Accordingly, Applicants respectfully request that the Notice of Abandonment issued in connection with the subject application be withdrawn pursuant to the provisions of 37 C.F.R. § 1.181(a).

No fee is deemed necessary in connection with the filing of this Petition. However, should the Director determine that a fee is due, please charge the required amount to Jones Day Deposit Account No. 50-3013.

Date: December 17, 2004

Respectfully submitted,

Adriane M. Antler 32,605
Adriane M. Antler (Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017-6702
Phone: (212) 326-3939

Enclosures



UNITED STATES PATENT AND TRADEMARK OFFICE

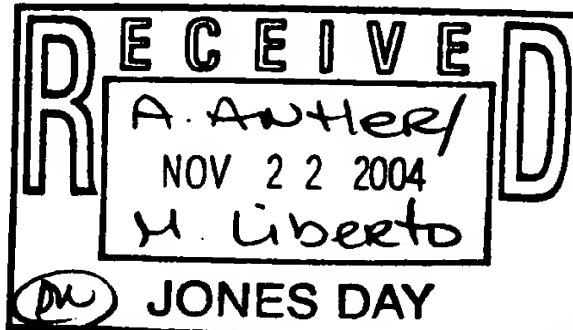
DEC 17 2004

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/393,652	09/10/1999	PRAMOD K. SRIVASTAVA	8449-025-999	3088

20583 7590 11/17/2004

JONES DAY
222 EAST 41ST ST
NEW YORK, NY 10017



EXAMINER	
EWOLDT, GERALD R	
ART UNIT	PAPER NUMBER
1644	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Petition to Revoke: 1/17/05

Notice of Abandonment

Application No.

09/393,652

Examiner

G. R. Ewoldt, Ph.D.

Applicant(s)

SRIVASTAVA ET AL.

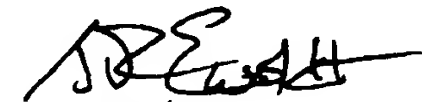
Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 25 February 2004.
 - (a) ☒ A reply was received on 26 August 2004 (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


11/8/04
G.R. EWOLDT, PH.D.
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.